IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1114 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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YOGESH ALIAS YOGU CHELARAM SINDHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1114 of 2001

MS SUBHADRA G PATEL for Petitioner No. 1

Mr. H.L. Jani, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 07/08/2001

ORAL JUDGEMENT

Heard learned advocate Ms. Subhadraben Patel for the petitioner and the learned AGP Mr. Jani for the respondents. In this petition under Article 226 of the the Constitution of India, the petitioner has challenged the impugned order of detention dated 30th December, 2000 passed by the detaining authority whereunder the

petitioner has been ordered to be detained at the Nadiad Jail as Class II detenu. The order of detention has been actually effected on 9.1.2001. According to the grounds of detention communicated to the petitioner under section 9(1) of the Gujarat Prevention of Anti Social Activities Act, in all, three offences have been registered against the petitioner under the Bombay Prohibition Act. As per the grounds of detention, the last offence registered against the petitioner was dated 28th November, 2000. The statements of the secret witnesses were recorded by the detaining authority and privilege under section 9(2) of the PASA Act. The statements of the secret witnesses as recorded by the detaining authority on 7th December 2000 were verified by the Dy. S.P. on 8th December, 2000 and were again thereafter verified by the detaining authority on 29th December, 2000 and immediately thereafter, on the very next date, on 30th December, 2000, impugned order of detention has been passed. The respondents have filed detailed reply to the present petition.

2. Learned advocate Ms. Patel has raised various contentions while challenging the impugned order of detention. However, according to her, one contention is enough for setting aside the impugned order of detention. She has submitted that in this case, the impugned order passed by the detaining authority is dated 30th Dec. 2000. According to her, the statements of the secret witnesses as recorded on 7th December, 2000 were initially verified by the authority other than the detaining authority on 8th December, 2000 and were verified by the detaining authority on 29th December, 2000 and immediately thereafter on 30th December, 2000. According to her, this is mechanical exercise of the powers in a routine manner without verifying the facts. The claim of privilege under section 9(2) of the PASA Act is not genuine and bona fide and the detaining authority has without examining the genuineness or otherwise of the statements of the secret witnesses, passed the impugned order on the very next date after verification of the statements and, therefore, the impugned order of detention is required to be quashed and set aside. She has relied upon the decision of this Court reported in 2000(3) GLR 2696.

Learned AGP Mr. Jani appearing for the respondents has submitted that the respondents have filed detailed affidavit in reply in this petition and relied upon para 8 at page 27. According to him, considering the activities of the detenu which were prejudicially affecting the maintenance of public order, the detaining

authority was justified in passing the impugned order. According to him, the detaining authority was justified in claiming privilege under section 9(2) of the PASA Act and the impugned order has been passed considering the activities of the petitioner distirbing public order and therefore, this COurt should not interfere with the same.

I have considered the decision reported in 2000(3) GLR page 2696. I have also considered the facts and circumstances of the case. Relevant observations made by this Court in decision reported in 2000(3) GLR 2696 are as under:

"After referring to Kalidas C. Kahar v. State of Gujarat, 1993 (2) GLR 1659, the Court observed:

The statements of the three witnesses in the instant case which were recorded before the [police inspector on 17th August, 1999, 21st August, 1999 and 25th August, 1999 with regard to the incidents dated 10th July, 1999, 13th June, 1999 and 26th June, 1999 were the material along with the proposal which is said to have been made on 27th August, 1999 and it is clear from the record that it was on 29th August 1999 that the detaining authority has recorded its verification of all these three statements. There is nothing on record to show that the detaining authority had considered the proposal dated 27th August, 1999 at any time prior to 29th August, 1999 and on 29th August 1999, all that has been done is that the concerned witnesses have stated before the detaining authority that the statements as had been made on the respective dates were correct and immediately thereafter on the following day, i.e., on 30th August, 1999 the detention order has been passed. (Para. 9).

The manner in which the verification has been recorded of the made by these three witnesses for the purpose of section 9(2) shows that the same has been done only as an empty formality in as much as the same witnesses had been called before the detaining authority and the detaining authority had recorded that whatever statements made by the witnesses were correct. Thus, the whole exercise appears to have been done as a mechanical exercise and it is not borne out that there is an active application of mind on this aspect of the matter by the detaining authority

for the purpose of verification of the facts as had been disclosed by the witnesses so as to express the fear and to invoke the privilege under Section 9 (2) against the disclosure of the names and addresses of the witnesses and it thus appears on the basis of the ratio of the decision of the Division Bench that it is a case of wrong exercise of power u/S. 9(2) and it is established that in such case the wrong exercise of power u/S. 9(2) adversely affects detenu's right of making an effective representation guaranteed under Article 22(5) of the Constitution of India. (Para. 9).

Once the materials are placed before the detaining authority with the proposal by the sponsoring authority it must have reasonably sufficient time for the purpose of verification of the facts and the consideration of the entire material with an active application of mind and the order has to be passed at the earliest opportunity, but in this process to strike the balance between the public interest and the right of the detenu either of the two should not be defeated in any manner and the whole process must indicate that the detaining authority had applied its mind with the requisite approach and it had also devoted sufficient time before arriving at the decision to claim the privilege u/S. 9(2) of the PASA Act and also to come to the conclusion that the detenu was required to be detained immediately. In the facts of the case, I find that this requirement of maintaining the balance has been defeated and the detention order has been passed on 30th August, 1999 i.e. on the next day to the date on which the materials were considered by the detaining authority."

According to my opinion, present petition is squarely covered by the facts of the aforesaid decision and therefore, following the ratio laid down by this Court in the aforesaid decision, the impugned order of detention is required to be quashed and set aside.

For the reasons recorded hereinabove, the petition succeeds and the same is allowed. The order of detention dated 30.12.2000 actually effected on 9.1.2001 is vitiated and resulted to quash and set aside. The detenu Yogesh alias Yogu Chelaram Sindhi who has been

detained at the Nadiad Jail be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. No order as to costs. Direct Service is Permitted.

7.8.2001. (H.K. Rathod,J.)

Vyas